

ZONING BOARD OF APPEALS
MEETING MINUTES
September 9, 2008
4:00 P.M.

CALL TO ORDER: Mr. Greg Dunn, Vice-Chairperson called meeting to order at 4:00 p.m.

ATTENDANCE:

Members Present: Deland Davis, Greg Dunn, Mike Fatt, Gentry Hammons, Jim Moreno, and Rick Barnes

Members Excused: Carlyle Sims, and John Stetler

Staff Present: Glenn Perian, Senior Planner; Barbara Hobson, Attorney, City Attorney Office and Leona Parrish, Admin. Assistant

ADDITIONS OR DELETIONS TO THE AGENDA: None

Mr. Glenn Perian noted the hand-outs that were provided to the board regarding corrections to the Z-08-08 Staff Report: (Page 6) Analysis & Comments; should read Two-Family in place of Single-Family also (Page 4) ZBA Authority; typo correction for the spelling of word "Article".

Stated that John Stetler was not able to attend the meeting and had provided a document with his opinion regarding today's appeals.

OLD BUSINESS: None

NEW BUSINESS:

Mr. Greg Dunn, Vice -Chairperson stated the meeting procedures and that everyone present may speak either for or against an appeal. He asked that they come forward and state their name and address for the record as it is being recorded.

Appeal # Z-08-08: (1st Part – Grandfather Use)

Mr. Glenn Perian stated this was an appeal from Mr. Stephen Jenkins, 37 Wealthy Avenue, Battle Creek, MI 49015 asking for a variance to allow a 6-unit multi-family structure to be used in an R-2 Zoned property located at 32 Battle Creek Avenue. Mr. Perian stated this would be a two-part appeal the first would be a determination to decide if a 6-unit would be a legal non-conforming or a grandfathered use; if not approved the second determination would be requesting a use variance to allow for 6-units residential dwelling in a R2 "Two-Family Residential District".

Mr. Mike Fatt asked if both appeals would be treated separately; 32 & 38 Battle Creek Avenue would be dealt separately, therefore have a total of four determinations (two for each property). Mr. Glenn Perian stated that is correct.

Mr. Stephen Jenkins, 37 Wealthy Avenue, Battle Creek, Michigan, was present to speak. He handed out a document which he read, stating it would be costly to convert into duplexes. Stated he had been asked by Neighborhood Services to appeal to the Zoning Board of Appeals even though he has had the legal non-conforming uses of these two apartment buildings since purchased in 1997. Said to convert these two properties it would cost approximately 64,000 dollars and as put a lot of money into the property

and would be a hardship for him to convert back into two-units. He presented a display board with photos of the houses next door and across the street of boarded-up and burned properties that surround his property and said values in some cases is worthless; he said properties that were sold nearby have been very low cash values. Stated he has had to deal with this for the past eleven years he has owned his property and that the feasibility of doing what the City of Battle Creek is asking would be a great hardship.

Mr. Greg Dunn asked Mr. Jenkins if he had received the staff report and referenced the new rental ordinance that was passed on December 18, 1984 regarding a non-conforming structure. He quoted a section of the ordinance from the staff report and asked Mr. Jenkins for his response regarding the grandfathering and non-conforming use.

Mr. Stephen Jenkins stated he does not have archive records from the City of Battle Creek and originally when the city was doing these types of things, they shot down a lot of properties for these same reasons and consequently came back and changed their determination. He can not find what is necessary for proof and that they have not been hidden rental units for years.

Mr. Dunn asked if there were any persons present to speak in favor or in opposition:

Speak In Favor:

Mr. Case Cadieux, 112 S. 31st St., Battle Creek, MI stated Mr. Jenkins had owned this property for years and had made repairs to this property as City Code requested. Stated it seems odd that after 11 years it is now not good enough after he was forced to do the repairs, it does not seem legal.

Speak In Opposition:

Mr. Darryl Smith, 57 Battle Creek Avenue, stated there was a lot of crime at these two units and on this street with prostitutes and drugs with landlords that do not take care of their property rentals. Said that is why their properties are depreciating and he had put thousands of dollars into his property and other neighbors have also. Said there are a lot of home owners that have dealt with these properties and have had at least four(4) times within a week the police have had to be present at these rental properties.

Mr. Greg Dunn asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

***MOTION: MR. JAMES MORENO MADE A MOTION TO APPROVE # Z-08-08
VARIANCE TO ALLOW FOR A LEGAL NON-COFORMING GRANDFATHERD USE AS
A SIX UNIT FOR PROPERTY LOCATED AT 32 BATTLE CREEK AVENUE,
SUPPORTED BY MR. GENTRY HAMMONS.***

Discussion:

Mr. Glenn Perian read the report, page 2 of the staff report stating Chapter 1288.01 (continuance and changes) needs to be lawful before zoning takes effect for it to be considered a legal non-conforming use. Stated research found that 32 Battle Creek Avenue have six units existing where two units have been permitted. It was built in 1918 as a two-family dwelling and records revealed that as late as 1968 it was a two-family dwelling. In 1950 the property was zoned "C-2 Family" which would allow 2 family residential in that zone. States they have nothing that shows the units were converted to 6-units legally in the form of any previous zoning variances, building permits or the like.

Mr. Greg Dunn stated he understands the arguments from the owners having made investments in their properties and know the city is trying to correct the properties uses. Stated that Mr. Jenkins may have an argument, but needed to know that if grandfathered they would undo the work that has been done by the City Commission. Stated he was not sure if there is a remedy or if this body is the place to find that remedy, he understands there is a procedure that needs to be followed.

Mr. Dunn stated regarding the grandfathered use; Mr. Jenkins stated it would be a loss of dollars and that section #6 of the rules for the Zoning Board of Appeals cannot approve a hardship because of gain financially. Noted that it was up to the owner to provide the burden of proof and needed to prove other hardship than financial loss, and demonstrate why the conditions on this property are unique or different from other properties in the city. He finds it hard in this case to approve and would be voting no.

Mr. James Moreno stated regarding their findings document, he did not see where it met number one on their list which is a show of a hardship that cannot be found with other properties within the city. Said he would not vote in support of the grandfathering clause.

Mr. Deland Davis stated he understands the owners need to research the property regarding its zoning prior to purchasing.

***MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A
VOTE WAS TAKEN FOR THE VARIANCE; NONE IN FAVOR; ALL OPPOSED: MOTION
FAILED. (See Attached Sheet of Zoning Board of Appeals Findings)***

Mr. Greg Dunn stated if they wished to do so, they have an option to appeal to the Circuit Court to overturn this board's decision.

Appeal # Z-08-08: (2nd Part)

Mr. Glenn Perian stated this was the second part for the appeal from Mr. Stephen Jenkins, 37 Wealthy Avenue, Battle Creek, MI 49015 to allow a use variance that would allow the continuation of a six-unit residential dwelling in an "R-2 Two-Family Residential District" zoned property located at 32 Battle Creek Avenue. States the property was built in 1918 as a two-family dwelling as late as 1967. In 1950 records show this area was zoned R-2 Two Family Residential uses, this request is to allow six-units in a two family zone. Stated for a use variance the zoning board needs a vote of five members to approve.

Mr. Stephen Jenkins asked for a rebuttal; stated how to decipher between his and other properties is that if it had been registered previously and dealt with by the city; it should have been unique and be allowed.

Mr. Greg Dunn asked city staff how many other properties before the rental ordinance were there in the city that would fit in the same class as Mr. Jenkins properties.

Mr. Dave Farmer stated it was not uncommon that before the rental ordinance #1453 was passed and became effective October 2007, which requires a zoning review; that the previous Ordinance Chapter 1460 which they operated according to ordinance the zoning review was not required when they registered rental properties. Stated no Certificate of Compliance was given to the owner allowing them to rent, because of a lack of follow through or for whatever reason that showed they passed the city

housing code, they were only checked for rental compliance. Noted the Assessors records might have records reflecting number of units, stated their office is not required to enforce or deal with zoning issues, even to this date. If they were to do so, it could hinder their access to the property, which is necessary to determine the size of the building, etc. Regarding the question, there were many properties that were done in this manner in the past; out of 400 or 500 properties there were maybe 25 brought out as being in this category.

Ms. Vickie Ellis, Neighborhood Services stated that 1,100 building registrations were done and are now going to those that are not in compliance.

Mr. Stephen Jenkins stated in light of what Mr. Farmer said, he would have been better off not doing of the minimum housing code compliance that was given to him, he showed a thick folder of violations given him in the past 10 years to repair on these rentals in order to be allowed to rent. Said it was very uncommon to receive a rental certificate of approval for anyone, only if they were hounded would they receive one. Stated he is now a victim.

Mr. Greg Dunn asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. JAMES MORENO MADE A MOTION TO APPROVE # Z-08-08 TO ALLOW A USE VARIANCE FOR A SIX-UNIT MULTI-FAMILY RESIDENTIAL IN A TWO-FAMILY RESIDENTIAL ZONED PROPERTY LOCATED AT 32 BATTLE CREEK AVENUE, SUPPORTED BY MR. GENTRY HAMMONS.

Discussion:

Mr. Gentry Hammons asked Mr. Jenkins if he checked the zoning when he purchased this property. Mr. Stephen Jenkins stated, no.

Mr. Gentry Hammons asked how many of the units are currently occupied. Mr. Jenkins stated four out of the five were occupied and that the sixth unit has not been used. He stated they are for low income subsidizes housing tenants that are raising expulsionary zoning issues, which this may be the cause.

Mr. Gentry Hammons asked Mr. Jenkins what he had done when he received the memo in March regarding his property being two-units. Mr. Jenkins stated he appealed to Neighborhood Services, which in turn denied his appeal. States he feels like he is being asked to move a garage that is already approved to be there.

Mr. Gentry Hammons asked what hardship he would have, if he had to reduce it to two-units. Mr. Jenkins stated it is very expensive to reduce it to two-units; that the conversion would cost more than the value of the property.

Mr. Hammons asked if it would be a financial hardship. Mr. Stephen Jenkins stated, yes, that he could leave two-units to rent then he would have four-units left vacant and would be a money drain and would most likely end up vacant buildings.

Mr. Greg Dunn stated he understands what Mr. Jenkins has done as the City has asked and appears to have maintained his property and can see a sense of injustice to Mr. Jenkins because of the length of

time he had it more than two-units. The zoning rules have been set for the City of Battle Creek by Planning Commission and City Commission and it is their decision to make those non-conforming to be conforming. Mr. Dunn stated that he has to say no as he cannot see it as being unique.

Mr. Stephen Jenkins said he has been asked to come here and was threatened with prosecution if he did not.

Mr. James Moreno stated that based on their findings item # 4 of their guidelines "is the alleged hardship or practical difficulty unique to the subject property resulting in a condition does not generally exist throughout the city". Sates he would have to vote no, as it has been clearly proven that they are finding these various properties in the rental community. Therefore, that particular phase of determination does not render unique and the hardship does not stand out only to it alone. In dealing with the fact of financial hardship, that is one of the articles that they cannot base and grant a variance if there is a financial hardship as being demonstrated here, and clearly the owner stated in order to renovate it back to a duplex it would be costly and a financial loss; for those two items in their findings document he cannot support in granting this and allow to continue as a six-unit.

Mr. Greg Dunn stated regarding point #8 in their findings document that you need substantial justice being done and in this case it is a classic case of justice. It is one persons rights (the property owner) who has made an investment as a property owner, trying to get a return on his investment, which is a legitimate right and then weight it against the rights of the surrounding property owners which are embodied by the gentleman who spoke against the appeal stating they have an injustice and have concerns also of what is surrounding them and is probably what initiated this ordinance.

Mr. Glenn Perian stated that on behalf of Mr. John Stetler he was not in support of granting the appeal and that the density should be taken back to two-units in conformance with the current zoning. He responded to the statement Mr. Jenkins made stating he had to come and did not have any choice; Stated he does have options: 1) He could withdraw rental applications and not rent the building. 2) Can comply and change to two-units. 3) Appeal for a use variance from the Zoning Board of Appeals.

Ms. Barbara Hobson, Attorney Office, stated she wanted to clarify between the grandfathering and the variance. Said that 99% of what you heard at the first public hearing really belonged to the second public hearing, which is the hardship and difficulties. The grandfathering is simply what is the zoning for that area, and was there a six-unit there prior to it being zoned to two-family residential and has nothing to do with hardship or complying with housing code ordinances. The board should consider what he said when voting for the variance as well as grandfathering. Pointed out that someone who owns and making the conditions such to when they are brought up to the minimum housing code to rent them, which has nothing to do with the zoning, would have given him the benefit of rental from tenants for years and years, which would have been illegal under the zoning. They did have that benefit of receiving year's worth of rent for those illegal units.

Mr. Mike Fatt stated regarding the issue of grandfathering; they understood the instruction given no indication there was ever any documentation or authorization of a six-unit residence, on that basis it could not be grandfathers as there is no indication it was ever legal.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; NONE IN FAVOR; ALL OPPOSED: MOTION FAILED. (See Attached Sheet of Zoning Board of Appeals Findings)

Mr. Greg Dunn stated if they wished to do so, they have an option to appeal to the Circuit Court to overturn this board's decision.

Appeal # Z-09-08: (1st Part - Grandfather Use)

Mr. Glenn Perian stated this was an appeal from Mr. Stephen Jenkins, 37 Wealthy Avenue, Battle Creek, MI 49015 asking for a variance to allow a 4-unit multi-family structure to be used in an R-2 Zoned property located at 38 Battle Creek Avenue. Mr. Perian stated this would also be a two-part appeal the first would be a determination to decide if a legal non-conforming grandfathered use, if not approved the second determination would be requesting a use variance to allow for 4-units residential dwelling in a R2 "Two-Family Residential District". Mr. Perian stated the residential structure was built 1900 as a two-family residential unit and until 1968 & 1950 records showed it was zoned C2 which would allow a two-family residential and the current zoning is R-2 which allow two-family residential.

Mr. Stephen Jenkins stated it was the same arguments as 32 Battle Creek Avenue. Stated he was not sure what Barb Hobson said about providing the minimum housing code and that he had benefits that he would speak later on about this issue.

Mr. Greg Dunn asked if there was any evidence available showing it was a legal 4-unit. Mr. Jenkins stated there was none available.

Mr. Greg Dunn asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. JAMES MORENO MADE A MOTION TO APPROVE # Z-09-08 VARIANCE TO ALLOW FOR GRANDFATHERD USE AS A FOUR- UNIT FOR PROPERTY LOCATED AT 38 BATTLE CREEK AVENUE, SUPPORTED BY MR. GENTRY HAMMONS.

Discussion:

Mr. Greg Dunn stated that in absence of Mr. Jenkins providing any evidence that the zoning of this property has been anything above beyond the C2 zoning; the does not think they can vote and accept the cities position.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; NONE IN FAVOR; ALL OPPOSED: MOTION FAILED. (See Attached Sheet of Zoning Board of Appeals Findings)

Mr. Greg Dunn stated if they wished to do so, they have an option to appeal to the Circuit Court to overturn this board's decision.

Appeal # Z-09-08: (2nd Part)

Mr. Glenn Perian stated this was the second part for the appeal from Mr. Stephen Jenkins, 37 Wealthy Avenue, Battle Creek, MI 49015 to allow a use variance for four-unit to be allowed in a two-family zoned property.

Mr. Jenkins stated he wanted to respond to Barbara Hobson's comments; said the minimum housing code was supposed to benefit him and he did not know regarding the enforcement of it in his case and the type of neighborhood that he has to deal with that has not been enforced. Said he had done what that City had asked him to do and feels he is a victim of the Cities past way of doing business.

Mr. Greg Dunn asked if there was anyone here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. DELAND DAVIS MADE A MOTION TO APPROVE # Z-09-08 TO ALLOW A USE VARIANCE FOR A FOUR-UNIT MULTI-FAMILY RESIDENTIAL IN A TWO-FAMILY RESIDENTIAL ZONED PROPERTY LOCATED AT 38 BATTLE CREEK AVENUE, SUPPORTED BY MR. MIKE FATT.

Discussion:

Mr. Greg Dunn stated this is not unique and that there are others with the same case. Said the lack of demonstration of financial gain; distinctive features of this property as opposed to properties, projects or similar properties around the city, which may be many, many more. Also, the justice argument, any one of which would be reason to vote no.

Mr. Glenn Perian stated on behalf of Mr. John Stetler that he would not be in favor of this variance and should be made to convert to two-units in conformance to the current zoning.

Mr. Mike Fatt states that this appeal fails to meet the conditions noted #4 "hardships are financial and fails to meet the conditions" and also #6 which stated "circumstances are not unique to the given situation".

Mr. Gentry Hammons asked Mr. Jenkins if there would be a financial hardship if this appeal were denied, and if there would be any other hardships.

Mr. Jenkins stated that hardship would be the cost to convert back to two-unit and the tenants would be disposed and it would be a hardship for them to have to be moved.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; NONE IN FAVOR; ALL OPPOSED: MOTION FAILED. (See Attached Sheet of Zoning Board of Appeals Findings)

Mr. Greg Dunn stated if they wished to do so, they have an option to appeal to the Circuit Court to overturn this board's decision.

Appeal # Z-10-08:

Mr. Glenn Perian stated this was an appeal for a variance submitted by Mr. LeRoy Rocco, 11441 12 Mile Rd., Ceresco, MI, requesting to allow a three-unit residential to be used in an R-1C "Single Family Residential District" for property located at 148 Lathrop Avenue. Mr. Perian stated records were found

that showed it was built in 1920 it was recorded in 1923 as a two-family residential as late as 1940. In 1950 it was zoned C-2 (2-family unit) and is now R-1C Single Family Residential. Stated the two-units can remain as legal non-conforming. Mr. Perian stated that Mr. Rocco is here today to seek a variance requesting this property to allow the use of a third-unit residential.

Mr. LeRoy Rocco, 11441 12 Mile Rd, Ceresco, MI came forward to speak. Stated he bought this property in 1978 as a three-unit and certified in 1991 inspected in 1990. He only to rents it to single-family people and looks like a single family house. Stated if it goes to two-family unit he would have more children and would make it look bad and pay utilities which is \$6,800 per year and that if it were a three-unit it would pay for itself. Said he rents them for about \$350 per month with utilities. He stated he has a letter from neighbor that has lived there for over 30 years that says it has never been a problem (provided a copy of this letter, from Mrs. Clarence Turner, 149 Lathrop Ave.) Letter was read for the record.

Mr. Greg Dunn asked if it was a three-unit rental when he purchased. Mr. Rocco stated, yes.

Mr. Jim Moreno asked if it were a two-unit would it be a financial hardship. Mr. Rocco stated he did not keep it fully rented last year, as it is hard to do and spent \$3,100 dollars out of his pocket last year and the cost would be more for him. Yes, if it were a two-unit he would not make any money at all.

Mr. Greg Dunn asked for clarification; two-family is permitted because it can be proven that it was allowed in the past through the city records even though it is zoned for single-family residential. Mr. Perian stated that is correct.

Mr. Greg Dunn asked if there were any one present to speak for or against this variance.

Speak In Favor:

Mr. Jimmy Capman, 171 North Avenue, stated he has helped Mr. Rocco since 1983 and has helped Mr. Rocco with his properties, noted he had a tenant receiving Section 8 living and has lived in all of his apartments in that building and all have been inspected and approved through Section 8.

Mr. Greg Dunn asked Mr. Rocco if he had a certificate for three-units approved by the City of Battle Creek. Mr. Rocco stated no, he has been in business for many years and have never received a certificate.

Mr. Greg Dunn asked if there was anyone here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. JAMES MORENO MADE A MOTION TO APPROVE # Z-10-08 TO ALLOW A USE VARIANCE FOR A THREE-UNIT RESIDENTIAL IN AN "R-1C SINGLE-FAMILY" RESIDENTIAL ZONED PROPERTY AND NOTED THE APPROVAL THAT IT MAY BE GRANDFATHERED AS A 2-UNIT RESIDENTIAL, FOR PROPERTY LOCATED AT 148 LATHROP AVENUE, SUPPORTED BY MR. GENTRY HAMMONS.

Discussion:

Mr. Mike Fatt asked if they need to consider a motion to grant a use variance for three-units.

Mr. James Moreno stated finds it difficult to find the practical hardship that would support granting this as a use variance as requested. This is why he had asked the specific question, if it would result in a financial hardship situation and automatically cannot be supported. Said the uniqueness of item #4 on their check list; it is not unique to the property which has already been demonstrated with other properties in the city under the rentals that it is not unique. Those two alone in their findings document are sufficient and said he would have to vote no.

Mr. Greg Dunn stated to Mr. Jenkins and Mr. Rocco; that if they find a use variance attached to the property that means it is forever and follows the property and not just with the owner.

Mr. Glenn Perian stated on behalf of Mr. John Stetler that he would not be in favor of granting this variance to allow the three-units at 148 Lathrop Ave., thinks it should remain as a two- unit residential.

***MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A
VOTE WAS TAKEN FOR THE VARIANCE; NONE IN FAVOR; ALL OPPOSED: MOTION
FAILED. (See Attached Sheet of Zoning Board of Appeals Findings)***

Mr. Greg Dunn stated if they wished to do so, they have an option to appeal to the Circuit Court to overturn this board's decision.

APPROVAL OF MINUTES:

***MOTION WAS MADE BY MR. JAMES MORENO TO APPROVE THE JUNE 10, 2008
ZONING BOARD OF APPEALS MINUTES AS SUBMITTED, SUPPORTED BY MR.
DELAND DAVIS. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.***

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. James Moreno stated they will have more of this type of variance requests; will be case by case basis and should be prepared for in the future. The property owners will feel they have been unjust in their decision; that they try to deal with each property with the information, rules and regulations they have been given as a ZBA to deal with.

Mr. Greg Dunn stated that each case will speak for themselves and that people will look at and has hopefully a better understanding of the process required to successfully get an appeal passed before the ZBA and come with prepared appeals. He would like to vote in favor of the appeals that come before them, but in many cases the appeals do not raise to the level they need to and hopefully they will have fewer and better appeals and be approved because they will think it through and understand the process.

Mr. Mike Fatt stated it will remedy those that have been inappropriately used in their zone. Stated it is unfortunate that when the properties are purchased they did not check the zoning. When you have oversaturated rentals, you will have problems with drugs and prostitution.

Mr. Deland Davis stated that many do not check the properties zoning. An example is same as when they want accessory buildings, the zoning needs to be checked.

Ms. Barbara Hobson stated the staff has been discussing is that even with this new ordinance, the zoning is required to be checked even if this ordinance was stricken tomorrow. These properties that are coming before you are still out of compliance with the zoning and are still illegal regardless of the rental property ordinance issues. Property values do go down when you start adding a lot of dense housing and these properties exist and are not being used as they are zoned. It would be good if the zoning board asked the owners if they converted these properties and get a very affirmative statement from them.

Mr. Greg Dunn stated they need to try to use the property as it had been zoned. It might work to their advantage.

Mr. Deland Davis stated if they did convert the property it would be without a building permit and done illegally. At one point in time either the new owner or previous owner had done it illegally to what it is now.

Mr. James Moreno stated there are those that have pulled a permit and then find it is not correct and then need to request a variance.

Mr. Glenn Perian states they do review and search the files for permits to see if they were done legally and if so they are taken into consideration. If the owner came to them and provided a building permit or proof that this was done legally, obviously they would take this into consideration. It is their goal to process these and find a way to exist and rent their properties in a legal manner. As staff they do not have the authority to approve without proof, just because it has been changed this way for years.

Mr. Mike Fatt stated that the burden of proof is upon the owner.

Mr. Greg Dunn wanted to note that September 11th is in a few days and asked that thoughts and prayers to go out to those that serve to protect us; police, fire, military persons etc.

ADJOURNMENT: Mr. Deland Davis made a motion to adjourn the meeting, second by Mr. Gentry Hammons; all in favor. Meeting adjourned at 5:27 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department



Appeal No. 2 08 - 09

Hearing Date: 9/9/08

Appellant: Stephen Jenkins

Decision of the Board _____ Approved ☒ Denied

Chairman Signature: [Signature]

Page 1

Grandfathered (PART 1)

ZONING BOARD OF APPEALS FINDINGS:

Chapter 1234 "Zoning Board of Appeals", Section 1234.04 "Jurisdiction", provides the following criteria for your deliberation:

"(c) In consideration of all appeals and proposed exceptions to or variations from this Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the following conditions are satisfied:

(1) A variance may be granted only when it can be clearly demonstrated by the petitioner that hardship or practical difficulty will in fact exist if such a variance is not granted.

❖ **Did the Appellant show that a hardship or practical difficulty would exist absent of the requested variance?**

Meets Condition #1? ☐ Yes ☐ No

(2) The mere fact that older, larger signs (or other projects) constructed under prior ordinances exist in the area shall not be sufficient reason to declare hardship or practical difficulty.

❖ **Did the Appellant present facts to support the request for a variance from the sign/zoning code other than the fact that non-conforming signs (or other non-conforming projects) exist in the City?**

Meets Condition #2? ☐ Yes ☐ No

(3) In no case shall a variance be granted if it is determined by the Board that the applicant has created the hardship or practical difficulty.

❖ **Did the Appellant show that the hardship or practical difficulty was not self created?**

Meets Condition #3? ☐ Yes ☐ No

(4) Before a variance is granted, it must be shown that the alleged hardships or practical difficulties are exceptional and peculiar to the property of the person requesting a variance and result from conditions which do not generally exist throughout the City.

❖ **Is the alleged hardship or practical difficulty unique to the subject property resulting in conditions that do not generally exist throughout the City?**

Meets Condition #4? ☐ Yes ☐ No

(5) The applicant for a variance shall be prepared to furnish documentation to indicate that hardships or practical difficulties do, in fact, exist.

- ❖ **Has the Appellant furnished sufficient documentation to show that hardships or practical difficulties do exist?**

Meets Condition #5? ☐ Yes ☐ No

(6) The term hardship shall not be deemed financial hardship relating to the cost or size of the sign (or project), the fact that a sign (or project) has already been erected or the fact that a sign (or project) is only available in standard sizes.

- ❖ **Did the Appellant present facts supporting a hardship, other than financial, relating to the size of the sign/project, a sign or project already erected, or the limited size availability of the proposed sign or project?**

Meets Condition #6? ☐ Yes ☐ No

(7) The alleged hardship or practical difficulty which will result from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain higher financial return.

- ❖ **When considering hardship or practical difficulty; was a decision rendered on information based on substantially more than a mere inconvenience or inability to attain a higher financial return?**

Meets Condition #7? ☐ Yes ☐ No

(8) It must be shown that allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Zoning Code, the individual hardships that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.

- ❖ **In granting the variance will substantial justice result for the Appellant without a substantial detriment to the public good?**

Meets Condition #8? ☐ Yes ☐ No

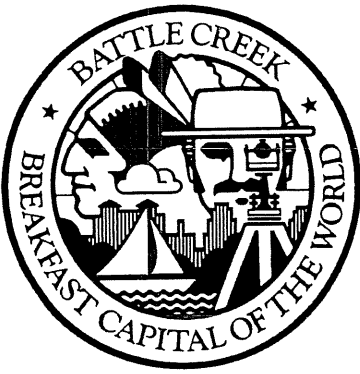
(9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.

- ❖ **(The finding of facts will be recorded in the minutes of the meeting).**

(10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

- ❖ **Granting the variance will not change or impair the intent of the Zoning Code.**

Meets Condition #10? ☐ Yes ☐ No



Appeal No.	<u>Appeal 2-08-08</u>
Hearing Date:	<u>9-09-08</u>
Appellant:	<u>Stephen A. Jenkins</u>
Decision of the Board	Approved <input checked="" type="checkbox"/> Denied
Chairman Signature:	<u>[Signature]</u>

(PART 2)

ZONING BOARD OF APPEALS FINDINGS:

Chapter 1234 "Zoning Board of Appeals", Section 1234.04 "Jurisdiction", provides the following criteria for your deliberation:

"(c) In consideration of all appeals and proposed exceptions to or variations from this Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the following conditions are satisfied:

- (1) A variance may be granted only when it can be clearly demonstrated by the petitioner that hardship or practical difficulty will in fact exist if such a variance is not granted.
 - ❖ Did the Appellant show that a hardship or practical difficulty would exist absent of the requested variance?

Meets Condition #1? ☐ Yes ☐ No
- (2) The mere fact that older, larger signs (or other projects) constructed under prior ordinances exist in the area shall not be sufficient reason to declare hardship or practical difficulty.
 - ❖ Did the Appellant present facts to support the request for a variance from the sign/zoning code other than the fact that non-conforming signs (or other non-conforming projects) exist in the City?

Meets Condition #2? ☐ Yes ☐ No
- (3) In no case shall a variance be granted if it is determined by the Board that the applicant has created the hardship or practical difficulty.
 - ❖ Did the Appellant show that the hardship or practical difficulty was not self created?

Meets Condition #3? ☐ Yes ☐ No
- (4) Before a variance is granted, it must be shown that the alleged hardships or practical difficulties are exceptional and peculiar to the property of the person requesting a variance and result from conditions which do not generally exist throughout the City.
 - ❖ Is the alleged hardship or practical difficulty unique to the subject property resulting in conditions that do not generally exist throughout the City?

Meets Condition #4? ☐ Yes ☒ No

(5) The applicant for a variance shall be prepared to furnish documentation to indicate that hardships or practical difficulties do, in fact, exist.

- ❖ **Has the Appellant furnished sufficient documentation to show that hardships or practical difficulties do exist?**

Meets Condition #5? ☐ Yes ☐ No

(6) The term hardship shall not be deemed financial hardship relating to the cost or size of the sign (or project), the fact that a sign (or project) has already been erected or the fact that a sign (or project) is only available in standard sizes.

- ❖ **Did the Appellant present facts supporting a hardship, other than financial, relating to the size of the sign/project, a sign or project already erected, or the limited size availability of the proposed sign or project?**

Meets Condition #6? ☐ Yes ☒ No

(7) The alleged hardship or practical difficulty which will result from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain higher financial return.

- ❖ **When considering hardship or practical difficulty; was a decision rendered on information based on substantially more than a mere inconvenience or inability to attain a higher financial return?**

Meets Condition #7? ☐ Yes ☐ No

(8) It must be shown that allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Zoning Code, the individual hardships that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.

- ❖ **In granting the variance will substantial justice result for the Appellant without a substantial detriment to the public good?**

Meets Condition #8? ☐ Yes ☒ No

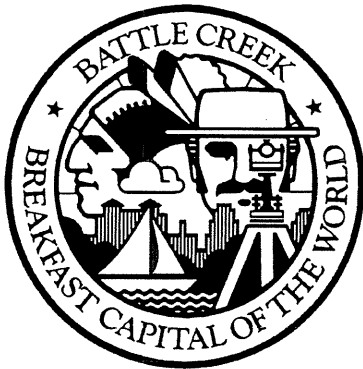
(9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.

- ❖ **(The finding of facts will be recorded in the minutes of the meeting).**

(10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

- ❖ **Granting the variance will not change or impair the intent of the Zoning Code.**

Meets Condition #10? ☐ Yes ☐ No



Appeal No. 2-09-08

Hearing Date: 9/9/08

Appellant: Steve Jenkins

Decision of the Board _____ Approved ☒ Denied

Chairman Signature: [Signature]

Graded and (PART 1)

Page 1

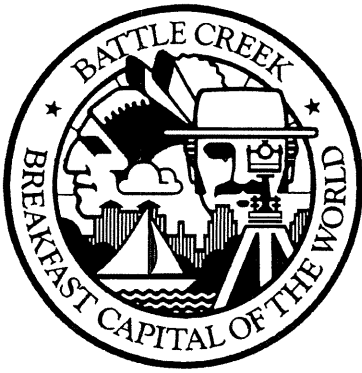
ZONING BOARD OF APPEALS FINDINGS:

Chapter 1234 "Zoning Board of Appeals", Section 1234.04 "Jurisdiction", provides the following criteria for your deliberation:

"(c) In consideration of all appeals and proposed exceptions to or variations from this Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the following conditions are satisfied:

- (1) A variance may be granted only when it can be clearly demonstrated by the petitioner that hardship or practical difficulty will in fact exist if such a variance is not granted.
❖ **Did the Appellant show that a hardship or practical difficulty would exist absent of the requested variance?**
Meets Condition #1? ☐ Yes ☐ No
- (2) The mere fact that older, larger signs (or other projects) constructed under prior ordinances exist in the area shall not be sufficient reason to declare hardship or practical difficulty.
❖ **Did the Appellant present facts to support the request for a variance from the sign/zoning code other than the fact that non-conforming signs (or other non-conforming projects) exist in the City?**
Meets Condition #2? ☐ Yes ☐ No
- (3) In no case shall a variance be granted if it is determined by the Board that the applicant has created the hardship or practical difficulty.
❖ **Did the Appellant show that the hardship or practical difficulty was not self created?**
Meets Condition #3? ☐ Yes ☐ No
- (4) Before a variance is granted, it must be shown that the alleged hardships or practical difficulties are exceptional and peculiar to the property of the person requesting a variance and result from conditions which do not generally exist throughout the City.
❖ **Is the alleged hardship or practical difficulty unique to the subject property resulting in conditions that do not generally exist throughout the City?**
Meets Condition #4? ☐ Yes ☐ No

- (5) The applicant for a variance shall be prepared to furnish documentation to indicate that hardships or practical difficulties do, in fact, exist.
- ❖ **Has the Appellant furnished sufficient documentation to show that hardships or practical difficulties do exist?**
Meets Condition #5? ☐ Yes ☐ No
- (6) The term hardship shall not be deemed financial hardship relating to the cost or size of the sign (or project), the fact that a sign (or project) has already been erected or the fact that a sign (or project) is only available in standard sizes.
- ❖ **Did the Appellant present facts supporting a hardship, other than financial, relating to the size of the sign/project, a sign or project already erected, or the limited size availability of the proposed sign or project?**
Meets Condition #6? ☐ Yes ☐ No
- (7) The alleged hardship or practical difficulty which will result from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain higher financial return.
- ❖ **When considering hardship or practical difficulty; was a decision rendered on information based on substantially more than a mere inconvenience or inability to attain a higher financial return?**
Meets Condition #7? ☐ Yes ☐ No
- (8) It must be shown that allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Zoning Code, the individual hardships that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- ❖ **In granting the variance will substantial justice result for the Appellant without a substantial detriment to the public good?**
Meets Condition #8? ☐ Yes ☐ No
- (9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.
- ❖ **(The finding of facts will be recorded in the minutes of the meeting).**
- (10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.
- ❖ **Granting the variance will not change or impair the intent of the Zoning Code.**
Meets Condition #10? ☐ Yes ☐ No

Appeal No. Appeal 2-09-08Hearing Date: 9-9-08Appellant: Stephen A. JenkinsDecision of the Board Approved ☒ DeniedChairman Signature: [Signature]

(PART 2)

ZONING BOARD OF APPEALS FINDINGS:

Chapter 1234 "Zoning Board of Appeals", Section 1234.04 "Jurisdiction", provides the following criteria for your deliberation:

"(c) In consideration of all appeals and proposed exceptions to or variations from this Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the following conditions are satisfied:

- (1) A variance may be granted only when it can be clearly demonstrated by the petitioner that hardship or practical difficulty will in fact exist if such a variance is not granted.
 - ❖ **Did the Appellant show that a hardship or practical difficulty would exist absent of the requested variance?**

Meets Condition #1? ☐ Yes ☐ No
- (2) The mere fact that older, larger signs (or other projects) constructed under prior ordinances exist in the area shall not be sufficient reason to declare hardship or practical difficulty.
 - ❖ **Did the Appellant present facts to support the request for a variance from the sign/zoning code other than the fact that non-conforming signs (or other non-conforming projects) exist in the City?**

Meets Condition #2? ☐ Yes ☐ No
- (3) In no case shall a variance be granted if it is determined by the Board that the applicant has created the hardship or practical difficulty.
 - ❖ **Did the Appellant show that the hardship or practical difficulty was not self created?**

Meets Condition #3? ☐ Yes ☐ No
- (4) Before a variance is granted, it must be shown that the alleged hardships or practical difficulties are exceptional and peculiar to the property of the person requesting a variance and result from conditions which do not generally exist throughout the City.
 - ❖ **Is the alleged hardship or practical difficulty unique to the subject property resulting in conditions that do not generally exist throughout the City?**

Meets Condition #4? ☐ Yes ☒ No

- (5) The applicant for a variance shall be prepared to furnish documentation to indicate that hardships or practical difficulties do, in fact, exist.
- ❖ **Has the Appellant furnished sufficient documentation to show that hardships or practical difficulties do exist?**
Meets Condition #5? ☐ Yes ☐ No
- (6) The term hardship shall not be deemed financial hardship relating to the cost or size of the sign (or project), the fact that a sign (or project) has already been erected or the fact that a sign (or project) is only available in standard sizes.
- ❖ **Did the Appellant present facts supporting a hardship, other than financial, relating to the size of the sign/project, a sign or project already erected, or the limited size availability of the proposed sign or project?**
Meets Condition #6? ☐ Yes ☒ No
- (7) The alleged hardship or practical difficulty which will result from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain higher financial return.
- ❖ **When considering hardship or practical difficulty; was a decision rendered on information based on substantially more than a mere inconvenience or inability to attain a higher financial return?**
Meets Condition #7? ☐ Yes ☐ No
- (8) It must be shown that allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Zoning Code, the individual hardships that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- ❖ **In granting the variance will substantial justice result for the Appellant without a substantial detriment to the public good?**
Meets Condition #8? ☐ Yes ☒ No
- (9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.
- ❖ **(The finding of facts will be recorded in the minutes of the meeting).**
- (10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.
- ❖ **Granting the variance will not change or impair the intent of the Zoning Code.**
Meets Condition #10? ☐ Yes ☐ No



Appeal No. 2-10-08

Hearing Date: 9/9/08

Appellant: Larry Rocco

Decision of the Board _____ Approved ☒ Denied

Chairman Signature: GMD

Page 1

ZONING BOARD OF APPEALS FINDINGS:

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(1) A variance may be granted only when it can be clearly demonstrated by the petitioner that hardship or practical difficulty will in fact exist if such a variance is not granted.

❖ **Did the Appellant show that a hardship or practical difficulty would exist absent of the requested variance?**

Meets Condition #1? ☐ Yes

☐ No

(2) The mere fact that older, larger signs (or other projects) constructed under prior ordinances exist in the area shall not be sufficient reason to declare hardship or practical difficulty.

❖ **Did the Appellant present facts to support the request for a variance from the sign/zoning code other than the fact that non-conforming signs (or other non-conforming projects) exist in the City?**

Meets Condition #2? ☐ Yes

☐ No

(3) In no case shall a variance be granted if it is determined by the Board that the applicant has created the hardship or practical difficulty.

❖ **Did the Appellant show that the hardship or practical difficulty was not self created?**

Meets Condition #3? ☐ Yes

☐ No

(4) Before a variance is granted, it must be shown that the alleged hardships or practical difficulties are exceptional and peculiar to the property of the person requesting a variance and result from conditions which do not generally exist throughout the City.

❖ **Is the alleged hardship or practical difficulty unique to the subject property resulting in conditions that do not generally exist throughout the City?**

Meets Condition #4? ☐ Yes

☒ No

(5) The applicant for a variance shall be prepared to furnish documentation to indicate that hardships or practical difficulties do, in fact, exist.

- ❖ **Has the Appellant furnished sufficient documentation to show that hardships or practical difficulties do exist?**

Meets Condition #5? ☐ Yes ☐ No

(6) The term hardship shall not be deemed financial hardship relating to the cost or size of the sign (or project), the fact that a sign (or project) has already been erected or the fact that a sign (or project) is only available in standard sizes.

- ❖ **Did the Appellant present facts supporting a hardship, other than financial, relating to the size of the sign/project, a sign or project already erected, or the limited size availability of the proposed sign or project?**

Meets Condition #6? ☐ Yes ☐ No

(7) The alleged hardship or practical difficulty which will result from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain higher financial return.

- ❖ **When considering hardship or practical difficulty; was a decision rendered on information based on substantially more than a mere inconvenience or inability to attain a higher financial return?**

Meets Condition #7? ☐ Yes ☒ No

(8) It must be shown that allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Zoning Code, the individual hardships that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.

- ❖ **In granting the variance will substantial justice result for the Appellant without a substantial detriment to the public good?**

Meets Condition #8? ☐ Yes ☒ No

(9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.

- ❖ **(The finding of facts will be recorded in the minutes of the meeting).**

(10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

- ❖ **Granting the variance will not change or impair the intent of the Zoning Code.**

Meets Condition #10? ☐ Yes ☐ No

Zoning Board of Appeals

Finding of Fact:

All deliberations shall conclude with a statement which provides factual basis for its decision. These “findings of fact” must support conclusions that the standards and conditions imposed by the requirements of the Ordinance have been met whether the appeal is approved or denied. Said findings of fact shall include, but not be limited to, the following information:

- (a) How the application of the Ordinance creates unnecessary hardship or practical difficulty in the use of (a particular) property.
- (b) A description of any unique physical circumstances or conditions or exceptional topography that create practical difficulty.
- (c) Specific Findings (characteristics of the land) showing that because of physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of the Ordinance. That the authorization of a variance is therefore necessary to enable reasonable use of the property and that the condition is specific to this property and not general to other properties in the area.
- (d) Finding that the unnecessary hardship, whether physical, financial or otherwise, was not created by the appellant and is related only to property that is owned or occupied by the appellant.
- (e) A statement that the impacts of the variance, if authorized, will or will not affect the property values and use and enjoyment of the property in the neighborhood or district or if applicable negatively affect health, safety, and welfare.
- (f) A finding that the proposed variance does not permit the establishment of any use which is not permitted by right within the district.
- (g) The possible precedents of effects which might result from the approval or denial of the appeal.
- (h) Findings on the impact if the appeal is approved, on the ability of the County or other governmental agency to provide adequate public service and facilities and/or programs that might reasonably be required in the future.